REMARKS

Claims 1-2 have been cancelled. New Claims 3-5 have been added. No claims have been amended. Applicant submits that all amendments are supported by the application-as-filed and that no new matter has been added. Claims 3-5 are now in the application. Reconsideration of the application is requested in light of the foregoing amendments and following remarks.

Rejection of Claims under 35 U.S.C. §112 1st Paragraph

Claims 1 and 2 stand rejected for lack of enablement. Claims 1 and 2 have been canceled. New Claims 3, 4, and 5 are fully enabled by the specification. The statement in the specification of cooking to 175 degrees F limits the meats used to those which are known to be fully cooked at the recited temperature, thus placing one skilled in the art in possession of the selections of meat products which may be used in the meat products of the invention.

As suggested in the specification, the identification of the nuts, fruit, and seeds is not limited except to the extent that the selected ingredients must be known to be safe for consumption by humans as food.

Claims 3 and 4 recite general ingredient recipes from the specification, which are fully enabled in light of the cooking temperature and the ingredient list, which adds up to 100%. Accordingly, Claims 3-5 provide a written description of the invention as now claimed.

Withdrawal of the rejection under 35 U.S.C. §112 paragraph is respectfully requested.

Rejection of Claims under 35 U.S.C. §112 2nd Paragraph

Claims 1 and 2 stand rejected under 35 U.S.C. §112 2nd Paragraph as being indefinite. The examiner stated that it was not clear whether Claims 1 and 2 were process claims or composition claims. Claims 1 and 2 have been canceled. New Claim 3 recites a method of making a meat food product.. New Claims 4 and 5 recite smoked and cooked meat food product. Claim 3 recites specific steps in the method. Claims 4 and 5 recite

specific ingredients in the food product composition. Accordingly, Claims 3-5 are definite within the meaning of 35 U.S.C. §112 2nd paragraph. Withdrawal of the rejection under 35 U.S.C. §112 2nd paragraph is respectfully requested.

Rejection of Claims under 35 U.S.C. §103(a)

Claims 1 and 2 stand rejected as unpatentable over Christensen et al in view of Uozumi. The examiner asserts that it would have been obvious to include nuts in the meat product of Christensen et al since ground meat products have been prepared with nuts and fruit as taught by Uozumi. Applicant traverses.

Christensen teaches adding a large fraction of carbohydrate in the form of potato in order to develop a low fat, high starch food product. The present invention combines the meat with fruit and nuts and/or seeds, thus providing, contrary to the references of record, a high protein, low fat food product which is high in anti-oxidants, minerals, and vitamins. Applicant submits that there are lots of food ingredients from which one might possibly select in arriving at a modified composition of Christensen. In assessing the question of obviousness, one cannot simply look at Christensen and Uozumi. Rather, the law states that one must look at the art as a whole. When we look at the art as a whole, we find the full range of food ingredients which might possibly be added to the meat product of Christensen. So which one(s) shall we add?

Shall it be fruit?
Shall it be nuts?
Shall it be seeds?
Shall it be vegetables?
Shall it be refined foods?
Shall it be unrefined foods?
Shall it include eggs?
Shall it include dairy products?

The above are merely the initial questions which one must ask in order to begin to address the question of how one might modify Christensen to arrive at a different food. Clearly, a wide range of classes of foods can be considered for addition to the food product of Christensen. But which one? If we look at the art as a whole, we find instances of addition of each of the above classes of foods to meats which are then cooked, optionally

smoked. Applicant submits that nothing in the references leads one of ordinary skill in the art to an obvious selection of fruit and nuts/seeds.

In any event, simply adding fruit and nuts to the composition of Christensen does not arrive at the claimed invention, since the composition would still include the high levels of up to 50% potato starch, whereas the invention is a high protein food, not a high carbohydrate food.

In view of the above, applicants anticipate that the examiner may then assert that one of ordinary skill in the art would know that the reference inherently teaches that the defects of Christensen are overcome by Uozumi. However, as stated by the CAFC in In re Robertson, 49 USPQ 1949, 1950-51 (Fed. Cir. 1999):

> To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily described in the reference, and that it would be so recognized by persons of ordinary skill in the art. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

Clearly, the examiner has the burden of showing that the teaching of Uozumi must necessarily lead to the conclusion that the fruit and nuts of Uozumi is a substitute for the starch of Christensen.. But Uozumi does not logically support such conclusion.

The problem with the examiner's analysis is that it is merely speculation on what the reference might or might not imply. Such speculation on the part of the examiner as to the actual intent of the writer of Uozumi does not meet the standards set out by the CAFC in Robertson, and thus cannot anticipate or make obvious Claims 3-5. Therefore, Claims 3-5 are allowable over the reference.

Applicant thus submits that all claims as presented herein are allowable over all references of record. Allowance is respectfully solicited.

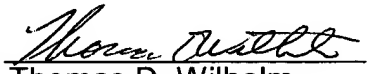
This application is subject to an Office Action dated January 29, 2004. A response was due April 29, 2004. Accordingly, an extension of 3 months to July 29, 2004 is required to maintain pendency of this application to the date when the accompanying RCE and this amendment are filed. Such extension is hereby respectfully requested.

A check in the amount of $475 is enclosed to pay the fee for the 3-month extension. A second check in the amount of $385 is enclosed to pay the fee for the RCE. No other

fee is believed to be due. Should any other fee be properly due, or if any refund is due, kindly charge same, or credit any overpayment, to Deposit Account 23-2130.

Please feel free to contact me with any questions, comments or concerns, at the telephone number listed below.

Respectfully submitted,
Jeffrey Michael Fulbright

By: 
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